

REMARKS

I. Introduction

Claims 1-20 are pending in this application. Applicants note with appreciation, the Examiner's withdrawal of the October 3, 2007 Restriction Requirement and the allowance of claim 1, 2, 6 and 7. Claims 3, 14 and 15 have been amended to clarify the language of the claims and claims 8, 15 and 16 have been cancelled with out prejudice.

No new matter has been added.

For the following reasons this application should be allowed and the case passed to issue.

II. Claim Objections

Claims 4-5 were objected to for depending from a rejected base claim, but otherwise being in condition for allowance. Applicants respectfully submit that claim 3 has been amended to obviate the rejection under 35 U.S.C. § 112, second paragraph, and thereby obviating the objection to claims 4 and 5.

Accordingly, it is respectfully submitted that claim 3 is in condition for allowance.

Furthermore, claims 4 and 5 depend from allowable claim 3 and therefore are also now in condition for allowance.

Claims 8, 16 and 18 were objected to for allegedly appearing to not further limit the claimed subject matter. Claims 8, 16 and 18 have been cancelled with out prejudice, thereby obviating the rejection.

III. Claims Rejection – 35 U.S.C. § 112, first paragraph

Claims 9-20 were rejected under 35 U.S.C. § 112, first paragraph. The Examiner alleges that the specification, while being enabling for an electroactive hydrogel composition or drug delivery device which contains a therapeutic or diagnostic agent, or a method of delivering a therapeutic or diagnostic agent by employing such device, does not reasonably provide enablement for such composition or device which contains a “prophylactic” agent or such method where a “prophylactic” agent is delivered.

The Examiner takes the position that the term “prophylactic agent,” may be interpreted as being synonymous with curing the disease, but later notes on page 5 of the Office Action, that the term “prophylactic,” is not necessarily synonymous with a “cure.”

Applicants respectfully disagree with the Examiner’s position.

As an initial matter, the subject matter of claims 9-20 is a electroactive hydrogel composition that is used as a drug delivery device. The claims are not concerned with the actual prophylactic agent.

Moreover, prophylactic treatments are well known. The term prophylactic as defined in Webster’s New World Dictionary Third College Edition, 1988 defines the term prophylactic as “preventing or guarding against disease.” It is respectfully submitted that the Examiner’s interpretation of the term “prophylactic,” as being synonymous with a “cure,” is unreasonable. A person having ordinary skill in the art would not interpret the instant claims as being directed to a cure for a disease.

Furthermore, the specification at page 17, lines 7-10 explains that, “the hydrogel precursor solution may contain the desired amount of a therapeutic or prophylactic agent, such as

for example, an antimicrobial agent, pharmaceutical agent, therapeutic protein, cells, nucleic acid, and the like.”

As such, the claim is enabled for what it recites, namely a delivery device and a method of using the drug delivery device.

Therefore, it is respectfully submitted that claims 9-20 are clearly enabled.

Accordingly, claim 9-20 should be allowed.

IV. Claim Rejection – 35 U.S.C. § 112, second paragraph

The Examiner rejected claims 3, 14-16 and 18 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to point out and distinctly claim the subject matter regarded as the invention.

Applicants have amended claims 3, 14 and 15, per the Examiner's suggestion, and cancelled claim 16-18, thereby obviating the rejection.

Accordingly, it is respectfully submitted that claims 3 and 14-16 are allowable.

V. Conclusion

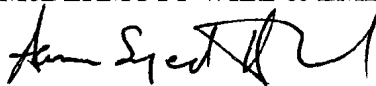
It is respectfully submitted that the present application, as amended above, is in condition for allowance, an early notification thereof being earnestly solicited. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

Application No.: 10/803,985

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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